

Response to the non-Final Office Action dated September 4, 2007Overview

In response to the 102(b) rejection, the Applicant amended independent claim 1. Support for amended claim 1 can be found at paragraphs [0008, 0011-0013 and elsewhere in the specification].

Response to the 102(b) Rejection Based on Hopson

This Action rejected pending claims 1, 7, 9, 10 and 21-24 as being anticipated by Hopson (5,881,769).

Applicant amended independent claim 1. The anticipation standard is partly stated in W.L. Gore & Assoc., "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." See W.L. Gore & Assocs. V. Garlock, 721 F.2d 1540 (Fed. Cir. 1983).

Furthermore, "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." See Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452 (Fed. Cir. 1983).

The prima facie case for anticipation requires 1) a single reference, 2) that teaches or enables, 3) each of the claimed elements (arranged in the claim, including functional results), 4) expressly or inherently, and 5) as interpreted by one of ordinary skill in the art.

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Amended claim 1 positively claims a source of pressurized fluid and furthermore, this source is maintained or still connected to the disengaged connector or first connector of the instant application. Hopson does not disclose a pressurized fluid source. And neither does Hopson disclose a source of fluid connected to the disengage connector or its breakaway coupling (28). Also, Hopson does not disclose a controller comprising instructions to provide a timed sequence of pressurized fluid to a compression sleeve in fluid communication with a fluid orifice of the connector. Please refer to Hopson at FIG. 2 versus FIG. 1.

In closing, Hopson '769 does not provide for a pressurized fluid flow through its bleed ports 31 when the first adaptor 8 and second adaptor 9 are disconnected. By contrast, in the instant application the connector is disconnected in a second position, and flow continues through the valve (76) seat. This allows the valve to partially close off the fluid orifice to the pressurized fluid, to simulate the pneumatic characteristic of the detached compression sleeve bladder. The benefit is the controller will not alarm when the sleeve is removed (by detaching the sleeve from its fluid conduit (i.e. fluid orifice) and terminating the timed sequence of pressurized fluid or therapy. See Paragraph [0011 and through the Specification]. This is not disclosed in Hopson '769.

Response to 103(a) Rejection Summerville and in view of Fross

In response, the Applicant restates its previous argument against Summerville. A prima facie case of obviousness is established when the Examiner provides 1) one or more references, 2) that were available to the inventor and 3) that

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teach, 4) a suggestion to combine or modify the references, 5) and the combination or modification of which would appear to be sufficient to have made the claimed invention obvious to one of ordinary skill in the art.

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The claimed invention must be considered as a whole and the instant claim is not to be used as an instruction manual to find the combination of cited references provides the motivation or suggestion to combine the references. Amended claim 1 is restated in part below:

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in the first position the valve is in a substantially open position by the second connector, the pressurized fluid source delivers a pressurized fluid through the valve to the compression sleeve in fluid communication with the fluid orifice; and

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in the second position the second connector is detached from the first connector, the valve advances in a proximal direction in the fluid orifice, the pressurized fluid source continues to deliver the fluid through the valve when the valve substantially reduces but does not close the fluid orifice to fluid flow therethrough for approximating the pneumatic behavior of the detached compression sleeve at the second connector. (amendments accepted)

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Fross '131 teaches, as the Office Action pointed out, "The poppet assembly includes a poppet 87 having an axial bleed port 89, a poppet retainer 91 mounted in bore 85, and a spring 93 therebetween for biasing poppet 87 to the right against a seat at the right end of bore 89. Bleed port 89 prevents poppet 87 from sealing the right end of bore 85." This is shown in operation in Fross FIGS. 3-5. In Fross' disconnected position,

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as described above, there is no suggestion or motivation, or need, for pressurized flow through bleed port 89.

In the instant application, as amended, the pressurized fluid is maintained at its disengaged connector. The benefit is discussed above in response to the anticipation rejection. The Fross male coupler (55) when disengaged, at FIG. 3, does not allow its hydraulic fluid to pass. Alternatively, Fross' female coupler (83) does not seal the right end of bore (85). However, Fross teaches away by closing its male coupler (55) to fluid flow with its valve, when the two couplers are disconnected, and Fross allows flow, by displacing the sea water contained in the chamber (15), with its male coupler (55) connected to the female coupler. Once connected, as shown in Fross FIG. 5 and at c: 4, 1:25-30, pressurized flow is allowed through the male coupler (55).

Next, the combination creates an inoperable device, that is, a device that can not function as the claimed invention when taken as a whole. The Applicant respectfully avers, the proposed combination with Fross makes the Summerville reference inoperable for its intended purpose. See *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984) (finding no suggestion to modify a prior art device where the modifications would render the device inoperable for its intended purpose.) Summerville seals against fluid flow when disconnected.

The Applicant asserts its previous arguments made in early response that Summerville operates automatically to fluid-seal the two parts of the coupling, when the coupling is disengaged. Summerville's valve members 25 will simultaneously close automatically so as to seal off the fluid supply. (3:24-26). Applying the teachings of the Fross poppet assembly with its

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axial bleed pot 89 to replace the valve head member 25 of Summerville, the Summerville valve 25 will leak fluid at 29-30. This is not the intended operation of Summerville. Summerville teaches that it is "absolutely necessary that the conduit member 40 be pulled downward . . . and an upward pull of member 40 is absolutely resisted by the coupling device." (3:3-45).

The Applicant respectfully avers the Examiner has not demonstrated obviousness in failing to meet elements 3 and 4 of the required prima facie case. See Graham, 383 U.S. 1.

The Applicant respectfully reminds the Examiner that the invention must be taken as a whole according to 35 U.S.C. 103(a). The Applicant respectfully suggests when its invention is taken as a whole as claimed, the cited references do not show or teach fluid flow through an orifice when the fluid connector apparatus is disconnected.

The Applicant respectfully suggest neither Fross nor Summerville disclose maintaining a pressurized fluid source and flow of the fluid through a removed connector part (i.e. two connector parts form a valve assembly as disclosed in the cited references).

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Closing

5 The Applicant respectfully requests allowance of the amended independent claim 1 and the dependent claims 7, 9, 10 12, and 21-24 depending directly or indirectly from amended independent claim 1.

10 Applicant respectfully requests an Examiner interview, if the above amendments do not place this application in condition for allowance. Applicant petitions for any extension necessary to maintain the pendency of this case, and the Applicant further authorizes the Commissioner of Patents to charge Deposit Account
15 Number 190254 for any late fees or charges necessary to avoid abandonment of this case. I can be reached direct at (508) 261-8476 or Edward.S.Jarmolowicz@tyco.com

Respectfully yours,

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